



# *COMMONWEALTH of VIRGINIA*

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **Blue Ridge Regional Office**

[www.deq.virginia.gov](http://www.deq.virginia.gov)

David K. Paylor  
Director

Robert J. Weld  
Regional Director

Molly Joseph Ward  
Secretary of Natural Resources

**Lynchburg Office**  
7705 Timberlake Road  
Lynchburg, Virginia 24502  
(434) 582-5120  
Fax (434) 582-5125

**Roanoke Office**  
3019 Peters Creek Road  
Roanoke, Virginia 24019  
(540) 562-6700  
Fax (540) 562-6725

## **STATE WATER CONTROL BOARD AND THE VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE TOWN OF PULASKI FOR THE FORMER LANDFILL SITE PREVIOUSLY ASSOCIATED WITH SOLID WASTE PERMIT NUMBERS: SWP230 & SWP048**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, 62.1-44.15:48 and 10.1-1455, between the State Water Control Board, Virginia Waste Management Board and the Town of Pulaski, regarding the former landfill site located in Pulaski County, Virginia, for the purpose of resolving certain violations of the State Water Control Law, Virginia Waste Management Act and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Boards" means the State Water Control Board and the Virginia Waste Management Board.

3. “BRRO” means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. “Construction activity” means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means the discharge of a VWP or Stormwater Pollutant.
8. “Discharge of a pollutant” means:
  - a. Any addition of any VWP or Stormwater Pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any VWP or Stormwater Pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. “Facility” or “Site” means the Town of Pulaski’s landfill site located at/near 3815 Lee Highway, Pulaski County, Virginia, and further identified as Tax Parcel 081-1-26 from which discharges of stormwater associated with construction activity occurred. This location is also the site of the management and disposal of solid waste without obtaining a permit.
10. “Fill Material” means any VWP pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
11. “General Permit Regulation” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
12. “Land disturbance” or “land-disturbing activity” means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
13. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

14. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
15. “Pollution” means “such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are ‘pollution.’” Va. Code § 62.1-44.3.
16. “Registration Statement” means a registration statement for coverage under the State Permit.
17. “State Permit” means a General VPDES Permit for Discharges of Stormwater from Construction Activities, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.
18. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
19. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. “Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
21. “Stormwater Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . .” 9 VAC 25-870-10.
22. “Stream restoration” means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

23. “SWCB” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
24. “SWM plan” means a stormwater management plan, a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
25. “SWPPP” means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of Stormwater Pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
26. The Town of Pulaski (“Town”) is a political subdivision of the Commonwealth of Virginia. The Town is a “person” within the meaning of Va. Code § 10.1-1400 and § 62.1-44.3.
27. “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
28. “Va. Code” means the Code of Virginia (1950), as amended.
29. “VAC” means the Virginia Administrative Code.
30. “VPDES” means Virginia Pollutant Discharge Elimination System.
31. “Virginia Waste Management Act” means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.
32. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
33. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear

projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.

34. “VSMP authority permit” means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of State Permit coverage has been provided where applicable. Va. Code § 62.1-44.15:24.
35. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 *et seq.*
36. “VSWMR” means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
37. “VWMB” means the Virginia Waste Management Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
38. “VWP Permit” means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code (“USC”) § 1344.
39. “VWP Pollutant” means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Town owns the Facility, which is further identified as Tax Parcel 081-1-26, at/near 3815 Lee Highway, Pulaski County, Virginia. The Facility was previously permitted under Solid Waste Permits SWP230 and SWP048, but the landfill had been closed prior to 1988. The Facility discharges stormwater associated with construction activity.
2. Unnamed tributary (“UT”) to Valley Branch, a tributary of Peak Creek, which is a tributary of the New River is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
3. The UT to Valley Branch, a tributary of Peak Creek is located in the New River Basin. The UT to Valley Branch, a tributary of Peak Creek is listed in DEQ’s 305(b)/303(d) report as impaired for copper, zinc, and PCB in fish tissue.
4. On March 12, 2015, March 18, 2015, and March 20, 2015, site inspections were performed by DEQ staff members at the Facility. Department files from all media programs were also reviewed. The following findings of fact and conclusions of law are based upon the staff’s

factual observation from the site inspections and recent file review, organized by media program.

5. The Department issued Notice of Violation No. NOV-15-06-BRRO-001 on June 3, 2015 to the Town for the violations noted above.
6. On June 16, 2015, Department staff met with representatives of the Town to discuss the violations, including the Town's plan of action to address the compliance issues.

### **Virginia Water Protection**

7. On March 18, 2015, DEQ staff inspected the Facility and observed that activities conducted at the Facility had discharged fill material into approximately 270 linear feet of stream bed of an UT to Valley Branch, a tributary of Peak Creek, which is a tributary of the New River. DEQ does not have a record indicating that the Town of Pulaski coordinated a review of the project with DEQ prior to the discharge. There is not a record of a stream and wetland delineation report, Join Permit Application, issuance of U.S. Army Corps of Engineers "Section 404" permit, or issuance of a DEQ VWP permit for the project.
8. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 state that no person shall dredge, fill or discharge any VWP Pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life without a VWP Permit issued by the Director.
9. The SWCB concludes that the Town violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(7) through C(8), above

### **VSMP**

10. On March 18, 2015, DEQ staff inspected the Facility and observed that land-disturbing activities had occurred in an area subject to stormwater runoff. The "Fill Area" consisted of approximately 0.5 acres of disturbed land. The "Borrow Area" consisted of approximately 3.3 acres of disturbed land.
11. Va. Code § 62.1-44.5 states in part, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities."
12. The VSMP Regulations, at 9 VAC 25-870-310(A), also state, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from

Municipal Separate Storm Sewer Systems or land-disturbing activities.” *See also* State Permit Section III(F).

13. Va. Code § 62.1- 44.15:34 states that a person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.
14. The Town has not registered for coverage under the State Permit for discharge of stormwater from construction activities at the Facility, and the Board has not issued any other certificate or permit for the discharge of stormwater from construction activities at the Facility.
15. The SWCB concludes that the Town violated Va. Code §§ 62.1-44.5 and 62.1- 44.15:34 and 9 VAC 25-870-310(A) by discharging stormwater from a construction activity without authorization by a certificate or permit issued by the Board or other entity authorized by the Board as described in paragraphs C(10) and C(14) of this Order.
16. During a DEQ Facility inspection on March 18, 2015, DEQ staff documented that a SWPPP, including an approved erosion and sediment control plan and an approved SWM plan, was not retained at the Facility or other accessible location. Pulaski County, the Virginia Erosion and Sediment Control Program authority, had not approved an erosion and sediment control plan for the Facility. DEQ, the VSMP authority for Pulaski County, had not approved a SWM plan for the Facility.
17. 9 VAC 25-870-54.G states that the SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP’s location must be posted near the main entrance at the construction site.
18. 9 VAC 25-870-54.F states in part that the stormwater pollution prevention plan must address enumerated requirements related to stormwater management and erosion and sediment control as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit.
19. 9 VAC 25-870-54.B states that an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the Virginia Erosion and Sediment Control Program authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
20. 9 VAC 25-870-54.C states that a stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.

21. The SWCB concludes that the Town violated 9 VAC 25-870-54.G, 9 VAC 25-870-54.F, 9 VAC 25-870-54.B, and 9 VAC 25-870-54.C regarding the retention of a SWPPP onsite and development of an approved erosion and sediment control plan, and SWM plan for the Facility, as described in paragraph C(16) through C(20) of this Order.
22. During a DEQ Facility inspection on March 18, 2015, DEQ staff observed that upslope land disturbing activities had occurred, but appropriate sediment control measures or filtering practices were not present at the perimeter of the land disturbance areas at the Facility. Soil stock piles and borrow areas were not stabilized or protected with sediment trapping measures.
23. 9 VAC 25-840-40.2 requires that during construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.
24. 9 VAC 25-840-40.4 requires that sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.
25. The SWCB concludes that the Town violated 9 VAC 25-870-54.B, 9 VAC 25-840-40.2, and 9 VAC 25-840-40.4 regarding failure to implement appropriate sediment control measures for the land-disturbing activity at the Facility, as described in paragraph C(17) and paragraphs C(22) through C(24) of this Order.

#### **Solid Waste**

26. On March 12, DEQ staff, in response to a complaint, conducted an inspection of the Facility. The complaint alleged that construction demolition debris (“CDD”) was being disposed by open burning. In addition to the open burning, the complaint alleged that solid sewer waste from the Town’s sewer vacuum truck was being dumped and buried at the site.
27. DEQ staff observed a smoldering pile of debris containing wood, insulation, metals and other mixed waste. There were three additional separate piles of brick, CDD mixed with trash, and scrap metal.
28. The alleged dump site for the solid sewer waste is located in an area of the Facility used for the disposal of fill material. An inspection of that area did not reveal any exposed solids and no aboveground evidence of where the solid sewer waste had been dumped. The site was graded flat and totally denuded of vegetation.



29. A review of Department files indicates that the Facility is not permitted for open burning or the disposal of solid sewer waste.
30. VA Code § 10.1-1408.1 requires that no person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.
31. 9 VAC 20-81-40(A) requires that no person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director.
32. 9 VAC 20-81-40(B) requires that no person shall allow waste to be disposed of or otherwise managed on his property except in compliance with this chapter.
33. 9 VAC 20-81-40(C) requires that it shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.
34. 9 VAC 20-81-40(D) requires that any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.
35. The VWMB concludes that the Town has violated VA Code § 10.1-1408.1 and 9 VAC 20-81-40 Prohibitions regarding open burning for disposal of solid waste and disposal of solid sewer waste, as described in paragraphs C(26) and C(28) of this Order.
36. In order for the Town to return to compliance, DEQ staff and the Town have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, 62.1-44.15:48, and 10.1-1455 and upon consideration of Va. Code §10.1-1186.2, the SWCB and VWMB order the Town and the Town agrees:

1. To perform the actions described in Appendix A of this Order; and
2. To a civil charge of **\$26,840** in settlement of the violations cited in this Order, to be paid as follows:
  - a. The Town shall pay **\$8,052** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality

Post Office Box 1104  
Richmond, Virginia 23218

- The Town shall include its Federal Employer Identification Number (FEIN) **54-6001538** with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund and the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Town shall be liable for attorneys' fees of 30% of the amount outstanding.
- b. The Town shall satisfy **\$18,788** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
  - c. The net project costs of the SEP to the Town shall not be less than the amount set forth in Paragraph D.2.b. If it is, the Town shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
  - d. By signing this Order the Town certifies that it has not commenced performance of the SEP.
  - e. The Town acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the Town to a third party, shall not relieve the Town of its responsibility to complete the SEP as described in this Order.
  - f. In the event it publicizes the SEP or the SEP results, the Town shall state in a prominent manner that the project is part of a settlement of an enforcement action.
  - g. The Department has the sole discretion to:
    - i. Authorize any alternate, equivalent SEP proposed by the Town; and
    - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
  - h. Should the Department determine that the Town has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the Town in

writing. Within 30 days of being notified, the Town shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

#### **SECTION E: Administrative Provisions**

1. The Boards may modify, rewrite, or amend this Order with the consent of the Town for good cause shown by the Town, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Town declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Town shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are

occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Town. Nevertheless, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the Town has completed all of the requirements of the Order;
  - b. the Town petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Town.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Town and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the Town certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Town voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Robert J. Weld, Regional Director  
Department of Environmental Quality

The Town of Pulaski voluntarily agrees to the issuance of this Order.

Date: 5/6/2016 By: [Signature], Town Manager  
Shawn Utt  
Town of Pulaski

Commonwealth of Virginia  
City/County of Pulaski

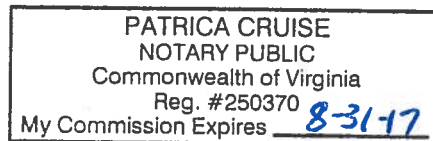
The foregoing document was signed and acknowledged before me this 6<sup>th</sup> day of May, 2016, by Shawn Utt who is the Town Manager of the Town of Pulaski, on behalf of the Town.

[Signature]  
Notary Public

250370  
Registration No.

My commission expires: 8-31-17

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

1. The Town shall submit to DEQ, for review and approval, by June 30, 2016, a detailed plan (“Corrective Action Plan”) addressing how the Town will achieve the stream restoration to address the unpermitted impacts to the UT to Valley Branch, a tributary of Peak Creek. The Corrective Action Plan shall also include a schedule of implementation and the Town shall respond to any DEQ comments regarding the Corrective Action Plan within 10 days from the date of the DEQ comments. Upon DEQ approval, the Town the Corrective Action Plan shall become an enforceable part of this Order. The Town shall immediately implement the approved Corrective Action Plan.
2. The Town shall complete the cleanup of the UT to Valley Branch, a tributary of Peak Creek in accordance with the Corrective Action Plan, as expeditiously as possible but in no event later than December 31, 2016.
3. The Town shall submit a final report documenting completion of cleanup, in accordance with the Corrective Action Plan, to DEQ by January 10, 2017, for its review and approval.
4. The Town shall submit a complete application including a complete and accurate Registration Statement to obtain coverage under the State Permit no later than June 30, 2016.
5. Unless otherwise specified in this Order, the Town shall submit all requirements of Appendix A of this Order to:

**Jerry Ford, Jr.**  
**VA DEQ - Blue Ridge Regional Office**  
**3019 Peters Creek Road**  
**Roanoke, VA 24019**  
**Phone: (540) 562-6817**  
**e-mail: [Jerry.Ford@deq.virginia.gov](mailto:Jerry.Ford@deq.virginia.gov)**

## APPENDIX B TOWN OF PULASKI SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, the Town shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by the Town is to plant native shrubs and trees along 925 linear ft. of Valley Branch and install 2 cross vanes to stabilize 115 ft. of eroding stream bank.
2. The Town shall begin implementing the SEP no later than September 30, 2016. This work will include live staking, native shrub and tree plantings, and installation of the 2 cross vanes. Live staking is a simple technique that installs a dormant cutting directly into the ground. This technique is often utilized where single stem plantings will provide adequate plant cover, slope stability and fish habitat.
3. The Town shall complete the initial SEP implementation no later than December 31, 2016.
4. The Town shall begin monitoring the vegetation planted for the SEP no later than September 1, 2017 to verify an adequate survival rate. Survival rate shall be evaluated by counting living and dead stakes, and dividing living stakes by the total number of stakes installed. **An adequate survival rate is accomplished when two consecutive annual reports meet or exceed the 80% survival rate which may include planted species and acceptable native volunteer tree and shrubs species that have colonized the site.**
5. The Town shall submit the first monitoring results report to the DEQ no later than November 1, 2017. The Town shall submit the second monitoring results report to the DEQ no later than November 1, 2018. Subsequent monitoring results report shall be submitted no later than November 1 of subsequent years.
6. The Town shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible Town official. The Town shall submit the final report and certification to the Department no later than December 31 of the year in which the Town as demonstrated an adequate survival rate per Paragraph 4 of this Appendix.
7. If the SEP has not or cannot be completed as described in the Order, the Town shall notify DEQ in writing no later than December 31, 2018. Such notification shall include:
  - a. an alternate SEP proposal, or
  - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.

8. The Town hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
9. The Town shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 10 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from a Town official concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
10. Unless otherwise specified in this Order, the Town shall submit all requirements of Appendix B of this Order to:

**Jerry Ford, Jr.**  
**VA DEQ - Blue Ridge Regional Office**  
**3019 Peters Creek Road**  
**Roanoke, VA 24019**  
**Phone: (540) 562-6817**  
**e-mail: [Jerry.Ford@deq.virginia.gov](mailto:Jerry.Ford@deq.virginia.gov)**